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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144

DOCKET FILE COPY ORIGINAL

and

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

To: The Commission

EX PARTE FILING

Respectfully submitted,

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SUMMARY

Advanced MobileComm, Inc. ("AMI"), through its counsel, hereby respectfully files this Ex Parte communication in response to the invitation of the Federal Communications Commission in the above-captioned proceeding.

In this document, AMI provides comments, recommendations and suggestions on the Commission's proposed rules. However, such discussion should not be taken to imply that AMI completely supports the Commission's proposal to auction this spectrum. Therefore, AMI provides these Comments to the Commission in an effort to reach an agreement on new rules which protect incumbent licensees to the maximum extent possible while providing geographic licensees with the maximum benefit from their licenses. However, AMI's Comments are being filed with the express understanding that AMI its rights to continue to oppose auctioning 800 MHz spectrum in any regulatory or judicial forum.

With the reservations expressed above, AMI supports BEA Service Area licensing for the upper 200 Channels, with bidders being permitted to bid on and hold licenses for all 200 channels in any given BEA. Auction winners should be allowed to engage in geographic or spectrum channel partitioning, and should be allowed to aggregate channels or geographic areas.

Transmitter-based SMR licensees who are not relocated should continue to be permitted to modify their facilities consistent with Section 90.621(b)(6) (the 22 dB μ interference contour at maximum power). AMI believes that incumbent SMR licensees retuned to other

channels should be afforded the opportunity to be granted a geographic license, where the BEA licensee clears sufficient spectrum to permit the incumbent SMR licensee to obtain a geographic license for the upper 200, lower 80, or even the 150 General Category ("GC") channels. Similarly, incumbent licensees on the lower 80 SMR Pool channels, the GC channels and the Business/Industrial Pool channels should be able to achieve channel exclusivity on a channel by channel basis if they are able to "clean-up" a channel in the entire BEA.

AMI requests that the Commission continue to make inter-category sharing available in Mexican border region for fully-loaded SMR systems. There is currently a shortfall of 800 MHz spectrum in all categories in the Mexican border area due to treaty relationships with Mexico to allow operators on both sides of the border access which channels. AMI urges the Commission to continue to allow SMR operators to convert underutilized channels in the Mexican border area. This process should be available to either an incumbent or auction winner. Neither has the ability without continued access to intercategory sharing to grow the proven benefits of trunking, whether current analog or future generation technology, in Mexican border areas.

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EX PARTE FILING

Advanced MobileComm, Inc. ("AMI") through its counsel, hereby respectfully files this Ex Parte communication in response to the invitation of the Federal Communications Commission in the above-captioned proceeding.¹

I. BACKGROUND

AMI has constructed and operated both regional and local 800 MHz and 900 MHz SMR systems in locations throughout the United States over the past decade. AMI's SMR systems have served thousands of users during that time. AMI also has participated extensively in FCC proceedings that have structured the SMR industry, and has been one of the leading proponents of the introduction of new spectrally-efficient technologies to enhance the capacity and capabilities of SMR systems.

¹Public Notice Report No. WT 95-23, DA 95-1965, released September 12, 1995.

At a meeting held at the FCC on September 18, 1995, the Wireless Telecommunications Bureau presented to representatives of the SMR industry the Commission's current vision of a Report and Order and Further Notice of Proposed Rule Making in the 800 MHz licensing proceeding. At that time, the Commission invited further industry Comment by September 29, 1995 on the current version of the proposed rules.

In this document, AMI provides comments, recommendations and suggestions on the Commission's proposed rules. However, such discussion should not be taken to imply that AMI completely supports the Commission's proposal to auction this spectrum. Therefore, AMI provides these comments to the Commission in an effort to reach an agreement on new rules which protect incumbent licensees to the maximum extent possible while providing geographic licensees with the maximum benefit from their licenses. However, AMI's Comments are being filed with the express understanding that AMI its rights to continue to oppose auctioning 800 MHz spectrum in any regulatory or judicial forum.

II. COMMENTS

AMI is concerned that the Wireless Telecommunications Bureau intends to decide licensing of the lower 80 SMR and 150 General Category channels in another phase of this proceeding. 800 MHz licensees must know what rules will govern remaining spectrum a reasonable period (at least 90 days) prior to any auction or relocation occurs. Without such knowledge, it is impossible for incumbent licensees in all portions of the 800 MHz spectrum to know

whether to bid on spectrum, whether to attempt to aggregate spectrum in the lower bands, or whether to accept the consequences of being a "relocatee".

A. 800 MHz Wide Area SMR Service and Auction Rules

With the reservations expressed above, AMI supports BEA Service Area licensing for the upper 200 Channels, with bidders being permitted to bid on and hold licenses for all 200 channels in any given BEA. Auction winners should be allowed to engage in geographic or spectrum channel partitioning, and should be allowed to aggregate channels or geographic areas.

Transmitter-based SMR licensees who are not relocated should continue to be permitted to modify their facilities consistent with Section 90.621(b)(6) (the 22 dB μ interference contour at maximum power). It is AMI's understanding that the Commission considered utilizing the 40 dB μ service contour as the criteria, but is now reviewing the 22 dB μ interference contour. It is AMI's view that use of the 40 dB μ service contour unnecessarily restricts incumbent licensees' flexibility. AMI strongly supports the Commission's reconsideration of this matter. Although the additional flexibility will be small, the use of the interference contour will allow some additional flexibility to utilize reduction of ERP, directional antennas, lower antennas, etc. to modify their systems.²

²Per the existing rules, the interference contour of the incumbent systems should be calculated utilizing maximum ERP for the antenna height above average terrain.

Since the reason to restrict the movement of incumbent licensees is to prevent interference to BEA licensees, it is most logical to restrict expansion of the interference contour. AMI believes that the utilization of the interference contour is the most equitable method to protect incumbent licensees, while not restricting the spectrum available to the auction winners.

B. Policies Governing The Retuning Of Incumbent SMR Licenses

Under the Bureau's plan, incumbent SMR licensees would be subject to involuntary retuning to other frequencies after a one year voluntary relocation period if afforded full cost compensation and comparable alternate facilities. However, AMI believes that the Commission should seize upon the opportunity to create a viable situation for both auction winners and incumbent licensees. The Commission should be equally concerned with enhancing the competitive opportunities for incumbent licensees who cannot afford to participate in the Commission's auction.

In this light, AMI believes that incumbent SMR licensees retuned to other channels should be afforded the opportunity to be granted a geographic license, where the BEA licensee clears sufficient spectrum to permit the incumbent SMR licensee to obtain a geographic license for the upper 200, lower 80, or even the 150 General Category ("GC") channels. By providing the opportunity for incumbent licensees to obtain a geographic license, incumbents can find value in agreeing to relocate during the initial "voluntary" period. Similarly, incumbent licensees on the lower 80 SMR Pool channels, the GC channels and the Business/Industrial Pool channels

should be able to achieve channel exclusivity on a channel by channel basis if they are able to "clean-up" a channel in the entire BEA.

Incumbent SMR licensees should have at least one year after receipt of a qualifying relocation plan to complete the modification. The parties could also mutually agree to a longer period of time. However, AMI is concerned that BEA licensees may isolate incumbent licensees for a significant period, making the incumbent licensee unable to make business plans or arrange to make arrangements to network with other independent operators. Therefore, AMI recommends that the incumbent SMR licensees may also request relocation from the BEA licensee. The BEA licensee must then make such spectrum available to the incumbent SMR licensee within one year. If the BEA licensee is unable to provide the spectrum for relocation after receiving the request from the incumbent, the incumbent should be considered to have fulfilled its obligation and should not be required to move.

1. The Bureau's Plan Creates Uncertainty For Incumbents

Another fear of incumbent licensees is that they will be relocated to the lower 80 SMR Pool channels or the 150 GC channels, only to be relocated again after the Commission revises the rules for those Pools. This will again create uncertainty for licensees, making business plans impossible and stranding investment and customers. Therefore, AMI supports the Commission's statements indicating that incumbent SMF licensees will only be required to

move one time, unless otherwise agreed to by the incumbent licensee.

Trunked SMR licenses have traditionally been allocated five channels with 1 MHz spacing. Therefore, virtually every SMR licensee in the upper 200 channels has channels in each of the proposed auction blocks. Where the three auction blocks are "purchased" by different applicants, the incumbent licensee may need to deal with multiple auction winners, each with their own idea of whether, and to what extent, the incumbent should be relocated. Again, this has the potential to delay, disrupt and deter business plans by incumbent licensees. AMI believes that it is important that in cases where the incumbent SMR licensee's frequencies are auctioned to multiple parties, the incumbent will not be required to move only a portion of the system's frequencies. The incumbent licensee may demand that a single, unified relocation plan be presented by the BEA licensees that encompass all of the incumbent's frequencies regardless of whether the geographic area extends over multiple BEAs.

The single, unified relocation plan must extend to cases where incumbent licensees have multiple transmitter site systems. In fact, many incumbent licensees now operate networks consisting of multiple systems at multiple sites. Permitting BEA licensees to relocate portions of a networked system at different times will have a devastating effect on the business and customer base of incumbent licensees.

Discussions between incumbent licensees and BEA auction winners cannot be expected to always be positive. Therefore, it is important that an independent mediation mechanism be established as part of this proceeding to be the point of first contact in disputes among incumbent licensees and BEA auction winners. Mediation costs will be paid by the auction winner, except in the case of a finding by the mediator that the incumbent licensee's request for arbitration was not filed in good faith and was frivolous.

C. General SMR Rules And Policies

Consistent with the Commission's proposal, AMI believes that the General Pool channels and the remaining 80 channels in the SMR Pool should initially be available for retuned incumbents with no auctions. However, as discussed above, licensees in the General Category, Business and Industrial/Land Transportation Pools should also be able to obtain geographic licenses by "clearing off" channels on a channel-by-channel basis in the respective Pools. AMI believes that the Public Safety, Industrial/Land Transportation and Business Frequency Pools should continue to be licensed under existing policies. Fully loaded, transmitter site based incumbent SMR licensees should continue to be permitted to access Industrial/Land Transportation, Business and General Access Pools through inter-category sharing.

The Commission has proposed to require existing Wide-Area Licensees to re-justify their requests, and complete construction of the system within two years or the remaining license term,

whichever is shorter. AMI does not oppose the certification for legitimate wide-area waiver recipients and extended implementation licensees of compliance with the Commission's rules for construction under which they were licensed. The Commission must not require a total re-justification of the waiver (i.e. channel re-use, channel separation, loading showing, etc.). The Commission must recognize that numerous companies are in the middle of business planning, construction and the raising of million of dollars for their systems based upon the Commission's grant of waivers and licenses. To require these licensees to completely re-justify their waiver requests is unfair, and may actually result in less competition in the marketplace. Nor should the Commission, for the same reason, shorten the period for construction under which the grant was given.

In addition, the Commission should recognize that the construction period for systems moving to more advanced technology is different than for applicants which do not have systems in operation. Existing systems converting to more advanced technology require more time to accomplish the conversion than to implement a new system. The conversion of customers must be accomplished on a gradual basis. Therefore, the Commission should be willing to provide the complete five year term for conversion of existing systems, presuming compliance under the Commission's current rules.

For completely new systems, the Commission should review carefully representations regarding availability of funds,

technical parameters and whether the system truly will be built before agreeing to provide the additional time for construction.

D. Comparable Systems For Relocated Incumbents

The basic premise of the transition rules is that an incumbent SMR licensee is entitled to a system "comparable" to its existing system with **all** costs paid by the auction winner.

- The auction winner would guarantee payment of all costs of retuning the incumbent, including all engineering and equipment fees, as well as any additional reasonable costs. Such expenses might include: FCC filing fees; preparation of a new application, etc.
- A comparable system would be one that is as good as or superior to the existing system. A comparable SMR system likely would have the following characteristics:
 - > The new system would have the same number of channels as the incumbent currently has constructed or that are within the initial construction period.
 - > The retuned frequencies would be selected so that they are compatible in a multi-channel system at the incumbent's operating location.
 - > The incumbent's base station equipment would have to be modified to operate on the new frequencies, and all subscriber units would have to be reprogrammed/recrystallized for the new frequencies, including user control stations. However, in some cases the incumbent end user equipment may not be modifiable and new equipment will be necessary.
 - > The new frequencies/equipment must provide the same (if not better) performance as the existing frequencies/equipment, including antenna height, transmitter power and effective radiated power as well as interference protection and co-channel spacing.
 - > The incumbent is entitled to the same channel separation for the new frequencies as the current authorization. In other words, if the licensee currently has 1 MHz spacing between the assigned channels, the incumbent is entitled to receive the same channel spacing on the new channels (unless the incumbent agrees otherwise). Similarly, an

incumbent utilizing contiguous channels is entitled to receive new contiguous channels as part of any move.

- The wide area licensee would complete all activities necessary for placing the new system into operation and provide the incumbent with a seamless transition to the new system. This may require the construction of a complete, redundant backbone system, with customers gradually moved from one system to the other.³ However, costs for the redundant backbone, as well as labor costs to manage the transition, **including** duplicative costs for tower rent, must be borne by the auction winner. Payment of costs to incumbent licensees should be made "up front" to the maximum extent possible. The incumbent licensee should not be required to put forth money for the transition. Similar to construction contracts, payment schedules should be created to provide the incumbent licensee with actual recovery of costs immediately.
- "Safety net" provision guarantees that no incumbent SMR licensee, under any circumstances, will be required to cease its operations unless suitable alternative facilities are identified and agreed to.
- BEA licensees should be required to notify any incumbent licensees that the BEA licensee intends to move the incumbents within one year of grant of the BEA license.
- Any information provided by the incumbent licensee to the BEA auction winner concerning business plans, customer identities, etc. should be treated as confidential. The BEA auction winner should be prohibited from soliciting directly any customers of an incumbent licensee they have assisted in relocating for at least one year following relocation.

1. **The Transition Plan And Cost Commitment Must Include:**

- a. The engineering plan for modification to the system or relocation to other spectrum or facilities;
- b. A review of options available or considered, along with reasons for the approach selected;

³The redundant backbone may need to include repeaters, interconnect equipment, combiners, antennas, additional telephone lines, site rental costs, equipment maintenance, etc. All costs for the redundant backbone must be borne by the BEA licensee.

- c. Cost estimates that include all direct and indirect costs to the incumbent SMR licensee from implementing the requested accommodation;
- d. Details concerning zoning, site availability, environmental and any other approvals required to effectuate the accommodation; and
- e. The projected time frame in which the accommodation can be implemented, consisting of all operational, regulatory and approval requirements.
- f. Incumbent licensees should be free to negotiate mutually acceptable agreements for spectrum accommodation or relocation
- g. Full Cost Compensation. In the event that voluntary negotiations prove fruitless at the expiration of a fixed period of one year, a BEA licensee may request involuntary relocation of the incumbent, subject to the condition that the BEA licensee assume the relocation costs.

E. Border Area Channels

AMI is concerned that the Commission has not yet adequately addressed the issue of Mexican and Canadian border area channels. As the Commission is aware, there are far fewer frequencies available in these areas, compared to the rest of the United States. In such areas, legitimate SMR operators have been forced to rely on inter-category sharing to relieve congestion on crowded systems. Therefore, AMI requests that the Commission continue to make inter-category sharing available in border regions for fully-loaded SMR systems.

AMI has considerable and fairly unique expertise in licensing and operating 800 MHz SMR systems in the Mexican border area. Its subsidiaries, Advanced MobileComm of Southern California and Advanced MobileComm West (AMISC & AMIW recently merged with Nextel) operated for 5 years in the San Diego market. Advanced MobileComm

Southwest Corp. is the managing partner for Advanced MobileComm Southwest, L.P. which operates in areas along the Mexican border in Texas. Further, as a result of work with pending merger partner Pittencrieff Communications, and discussions with other SMR operators with whom AMI has relationships through trade associations such as PCIA and AMTA, AMI has continued to develop this unique expertise in the Mexican border areas.

There is currently a shortfall of 800 MHz spectrum in all categories in the Mexican border area due to treaty relationships with Mexico to allow operators on both sides of the border access which channels. U.S. systems operate on a limited number of 12.5 kHz offset channels. Section 90.619(a) of the Commission's rules identifies 800 MHz channels available in the Mexican border area. As defined in the rules there are only 95 trunked SMR channels, no conventional SMR channels, and 120 Business or Industrial/Land Transportation Pool channels available. For SMR operators this represents a significant deficit to the 280 trunked SMR channels and 150 conventional channels available in the non-border areas.

Over the years that SMR operators have been growing their systems in this area, by making good use of converting pool channels from private use to SMR use through intercategory sharing. This has been an effective strategy that has served the public good. In many instances Business or Industrial/Land Transportation Pool channels operated inefficiently as multiple community repeaters able to serve a limited number of users, or licensed to a single user actually operating with fewer than authorized mobiles

- in both cases preventing the spectrum from being used as efficiently as possible. SMR operators have been active in identifying those types of situations and through system and service swap outs, purchase, and/or Finder's Preference filings have been adding such channels to their trunked systems. These channels, once added to loaded trunked systems, provided needed capacity that is leveraged by being used in the trunked mode.

As an example, Advanced MobileComm West, operating in San Diego, negotiated with local licensees and cleared a Business Pool channel from operating with two separately licensed community repeaters, which were only able to offer limited service to the public. The channel was assigned to AMIW and converted to trunked SMR. It will be incorporated into the wide area network there and efficiently serve a greater number of users.

In another case, AMIW identified a local private user that was licensed for 70 mobiles on a channel but was actually operating with fewer units. AMIW negotiated to provide service and equipment for the user on its wide area network in exchange for assignment of the channel. The channel will be converted to trunked operation and consequently will offer service to a greater number of users.

These examples are by no means unique to AMI or Southern California. All along the Mexican border there are spectrum short markets where SMR operators have been efficiently converting under utilized and inefficiently utilized Business and Industrial/Land Transportation channels to trunked operation. These markets include San Diego, El Paso, Tucson/Nogales, Brownsville and Laredo.

Indeed, with the advent of NAFTA, there has been ever increasing demand for service in these areas.

AMI urges the Commission to continue to allow SMR operators to convert underutilized channels in the Mexican border area. While AMI supports restricting SMR access to as yet unallocated channels outside of the SMR Pool, the effort and resulting efficiencies from converting to SMR licensed Business and Industrial/Land Transportation channels not being utilized to their fullest is clearly in the best interests of all.

This process should be available to either an incumbent or auction winner. Neither has the ability without continued access to intercategory sharing to grow the proven benefits of trunking, whether current analog or future generation technology, in Mexican border areas.

For incumbents in the border areas intercategory sharing allows continued growth for their systems where there are limited other SMR channels available to merge with or acquire. It also continues the process of converting spectrum to ever more efficient usages.

As it relates to the proposed 800 MHz auctions, there are only 30 SMR channels in the 861-865 MHz band. None of these channels are contiguous. They are interspersed with Industrial/Land Transportation, Business and Public Safety Pool channels. Therefore, there is little opportunity to assemble contiguous spectrum. However, given the proposed coverage requirements, incumbent relocation, and the significant populations along the

border, flexibility in accessing spectrum is crucial --
intercategory sharing meets that need.

III. CONCLUSION

For the foregoing reasons, AMI urges the Commission to modify its proposed rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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